

Internal Revenue Service

Department of the Treasury

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Signature

Person to Contact:

Telephone Number:

Refer Reply to:

Date:

FEB 23 1996

Employer Identification Number: [REDACTED]
Key District: Southeast (Baltimore, MD)

Dear Applicant:

We have considered your application for recognition of exemption under section 501(c)(3) of the Internal Revenue Code.

The information submitted indicates that you were incorporated on [REDACTED] for educational and charitable purposes which include: promoting appreciation of art, sculpture and other forms of art; providing opportunities to area artists to exhibit art, and to participate in juried and exhibitional exhibits; and raising standards of all forms of art.

You were conceived in [REDACTED] when an arts group asked to place an art show in a vacant commercial space in downtown [REDACTED], which became successful and led to new juried art exhibitions that were organized on a monthly basis. Building up on such success, you were formed by the participating artists to operate art exhibitions on a continuing basis.

You are a membership organization of artists with Charter members composed of those artists who have exhibited at least two times at your gallery before your incorporation. Sixty days after your incorporation, new members may join who have a majority vote of a committee appointed by your Board of Directors and who agrees to pay annual dues and to serve as needed in the organization. The number of new members who may join is limited to your exhibit space, currently in a leased facility consisting of approximately [REDACTED] sq. ft. on the ground level of a commercial building.

Selection of new members are held at monthly membership meetings when there is a vacancy for membership. An applicant for membership must submit for review 4 pieces of original work,

a sheet of slides of work, full resume, statement of the artist's intentions or thoughts about the work, and clippings of reviews, if available. The selection is based on quality and consistency of work submitted, professionalism, and evidence of serious commitment.

Your members are required to pay membership dues of \$ [redacted] annual dues and \$ [redacted] monthly dues. Also, members are required to pay a commission of [redacted]% of gross sales of their artworks. Your commission is to help defray your costs for sales promotion and handling. In addition, members are required to commit to a one-year renewable membership, gallery sitting of [redacted] to [redacted] hours per month (option to pay substitute trained sitter at \$ [redacted] per hour), share of expenses related to shows that feature the member's works, and serve on a gallery committee.

Your membership offers the following benefits to artists:

- feature in a [redacted]-person show each [redacted]-month period
- exhibit in [redacted] non-feature shows each year
- accessibility of work to the public via
 - [redacted] or more hung work
 - [redacted] original work in a gallery bin
 - [redacted] framed works in the gallery storage rack
 - [redacted] large portfolio of unframed work for viewing
 - Biography/slide books
- a gallery director available to promote members' work and provide contact with area's arts and business communities
- exchange exhibition with other galleries/alternative spaces
- artistic growth through peer review
- free admission to your sponsored special programs

You are primarily engaged in operating a cooperative gallery of exhibiting art works of members. Your gallery is open free to the public Monday through Friday from 12 noon to 6 pm and on Saturday from 10 am through 4 pm. You require all art works brought to the gallery to be clearly labeled on the back with the artist's name, address, phone number, title of work, and the retail price. The price of each art work should include your [redacted]% commission.

Your other activities include conducting a monthly membership meeting and sponsoring the "[redacted]" a presentation featuring prominent art professionals discuss their careers and experiences. The presentation, which requires \$ [redacted] admission fee, is co-sponsored by other two arts organizations

and has for its purpose to broaden the business and career prospective of artists and aspiring artists in the community by facilitating interaction with experts from diverse art fields.

You will rely for support from membership dues, sales commission and local business sponsorship. Funds will be used primarily for operating expenses.

You stated that you differ from a commercial art gallery pointing out these differences as follows: you were not organized for profit; your budgeted income shall be substantially derived from members with less revenue from sales; exhibitors are accepted on the basis of artistic merit and not commercial potential of their artworks; exhibited artworks remain in place during duration of each show in order to maintain cohesiveness and aesthetic impact of the exhibit; your gallery is run and staffed by artist volunteers; and you have no large advertising or marketing budget for promotion.

Also, with regards to the benefit provided to members on gallery sales, you stated that of the █% of members who sold artworks during the past year only a few had modest proceeds in excess of costs.

Section 501(c)(3) of the Code provides exemption to organizations organized and operated exclusively for educational, charitable or other exempt purposes.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)((1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest.

Section 1.501(c)(3)-1(e)(1) of the regulations provides that an organization may meet the requirements of section 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business. An organization which is organized and operated for the primary

purpose of carrying on an unrelated trade or business is not exempt under section 501(c)(3).

Rev. Rul. 66-178, 1966-1 C.B. 138, holds that an organization that fosters and develops the arts by sponsoring a public art exhibit at which the works of unknown but promising artists are gratuitously displayed, but not offered for sale, may qualify for exemption under section 501(c)(3) of the Code.

Rev. Rul. 71-395, 1971-2 C.B. 228, describes a cooperative gallery which was formed and is operated by a group of approximately 50 artists for the purposes of exhibiting and selling their works. Additional artists are admitted to membership by approval of the existing members. The gallery is open to the public six days a week. No admission is charged. Works of the member artists are exhibited and offered for sale. Special showings by individual members are also held on a rotating basis. The gallery retains a commission from sales and rental sufficient to cover the cost of operating the gallery. Any deficits that occur are covered by special assessments of the members. The ruling held that the organization is not exempt under section 501(c)(3) of the Code because it is primarily serving the private interests of its members. The organization is engaged as a vehicle for advancing their careers and promoting the sale of their work even though the exhibition and sale of paintings may be an educational activity in other respects.

Rev. Rul. 76-152, 1976-1 C.B. 151, describes a nonprofit organization formed by a group of art patrons to promote community understanding of modern art trends. The organization operates a gallery in which it selects artworks for display and for possible sale. A modern artwork of any local artist is eligible for consideration for exhibition. The organization retains a commission on sales of artworks. The ruling held that the organization does not qualify for exemption under section 501(c)(3) of the Code because it serves the private interests of those artists whose works are displayed for sale.

In Better Business Bureau of Washington, D. C. v. United States, 326 U. S. 279 (1945), the Supreme Court interpreted the requirement in section 501(c)(3) that an organization be "operated exclusively" by indicating that in order to fall within the claimed exemption, an organization must be devoted to exempt purposes exclusively. This plainly means that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes.

Our analysis of your application indicates that a significant part of your activities involve exhibiting and selling artworks to the general public. Even considering your arguments, we still find such activities as an ordinary trade or business not in furtherance of an exempt purpose. By engaging primarily, or to a substantial degree, in a trade or business ordinarily carried on for profit not in furtherance of an exempt purpose you are not operated exclusively for one or more exempt purposes under section 501(c)(3) of the Code. See sections 1.501(c)(3)-1(c)(1) and 1.501(c)(3)-1(e)(1) of the regulations. See also Better Business Bureau.

We also find that a significant part of your activities is serving the private interests of artist members. In your operation of a cooperative gallery you are advancing their careers and promoting the sale of their work. By serving private rather than public interests in your operations, you are not operated exclusively for one or more exempt purposes. See section 1.501(c)(3)-1(d)(1)(ii) of the regulations.

You are operated in a manner indistinguishable from the organizations described in Rev. Rul. 71-395 and Rev. Rul. 76-152 whose primary activities of exhibiting and selling artworks of participating artists were held to be serving private rather than public interests.

You are distinguishable from the organization described in Rev. Rul. 66-178 held to qualify for exemption under section 501(c)(3) of the Code. Whereas that organization's activity is limited to exhibiting artists' works and does not include selling such works, your activities involve the exhibiting and selling of participating artists' works.

Therefore, we conclude that you do not qualify for exemption under section 501(c)(3) of the Code.

Contributions to you are not deductible under section 170 of the Code.

You are required to file federal income tax returns on Form 1120.

You have the right to protest our ruling if you believe that it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement must be submitted within 30 days of the date of this letter and must be signed by one of your officers. You also have a right to a conference in this office after your statement is

submitted. If you want a conference, you must request it when you file your protest statement. If you are to be represented by someone who is not one of your officers, he/she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key District Director in Baltimore, Maryland. Thereafter, if you have any questions about your federal income tax status, including questions concerning reporting requirements, please contact your key District Director.

Sincerely,

[REDACTED]
[REDACTED]
Chief, Exempt Organizations.
Rulings Branch 3

copy: DD, Southeast (Baltimore, MD)
Attn: Chief, EP/EO Division